

# Northern New England

## MONDAY MORNING MINUTE

June 16, 2014

### Employer May Be Liable For Firing Caused By Jilted Co-Worker

If an employee is fired as a result of being maligned by a jilted co-worker, the employer may be liable for discrimination under federal law, according to a recent First Circuit decision.

In *Velázquez-Pérez v. Developers Diversified Realty Corp.*, the Federal First Circuit Court of Appeals examined, as a matter of first impression, employer liability under Title VII where a co-worker (versus a supervisor) engages in discriminatory efforts that cause a plaintiff's termination. The Court held that even when the employer does not act out of a discriminatory motive, it nonetheless can be liable for negligently permitting a co-worker's discriminatory acts to cause the plaintiff's firing.

The plaintiff in that case, Antonio Velázquez-Pérez (Velázquez), worked with human resources representative Rosa Martinez. When Velázquez rejected Martinez's romantic advances, she began to hint that she could use her influence to have him fired. Velázquez complained to his supervisor, who merely told him to send Martinez a conciliatory e-mail and later joked with another colleague that Velázquez should have sex with her. Velázquez's subsequent complaints to his supervisors were apparently ignored.

Meanwhile, Martinez began to criticize Velázquez's job performance to his supervisors and recommended that he be terminated. Velázquez's supervisors determined that termination was not justified, instead opting to issue a warning and a performance improvement plan to Velázquez. After Velázquez again rebuffed Martinez's advances, she took the matter a step further and referred it to company executives, urging that Velázquez be terminated immediately for deficiencies in his performance. He was fired four days later.

For specific information or answers to questions, please contact any of the attorneys in the Portsmouth, NH office:

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In his lawsuit, Velázquez alleged that the defendant-company discriminated against him on the basis of sex by terminating him and subjecting him to a hostile workplace, in violation of Title VII. He also claimed that the company retaliated against him for complaining of sexual harassment. The Court rejected Velázquez's hostile workplace and retaliation claims, but held that he made a viable claim that his termination was a result of sex discrimination, even though Martinez had no authority over any tangible employment actions affecting Velázquez and thus was not his supervisor.

The Court set forth a three-part test, holding that an employer faces liability under Title VII if:

- the co-worker acted, for discriminatory reasons, with the intent to cause the plaintiff's firing;
- the co-worker's actions were in fact the proximate cause of the termination; and
- the employer allowed the co-worker's acts to achieve their desired effect though it knew (or reasonably should have known) of the discriminatory motivation.

The *Velázquez-Pérez* case is significant in that it expands employer liability to situations in which the discriminator is a *co-worker*, versus a *supervisor*. If Martinez had been Velázquez's supervisor, more direct grounds to find the employer liable would have existed. The Court ruled for the first time that an employer can be liable for tangible employment actions based upon a co-worker's discriminatory reports if the plaintiff can establish that the employer acted negligently.

The case highlights the importance of documenting and investigating all employee complaints. Employers are also advised to consider potential motives of co-workers before taking adverse action based upon their reports of colleagues' wrongdoing. The decision is applicable to employers within the First Circuit's jurisdiction, which includes the Districts of Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island.

*Your Jackson Lewis Attorney can answer questions regarding this and other employment law issues.*



**The Portsmouth Office of Jackson Lewis P.C. was recently named a top tier "Labor and Employment" office in New Hampshire by *Chambers USA*.**

Additionally, Office Managing Shareholder **Debra Weiss Ford** and Portsmouth Shareholders **Thomas M. Closson**, **Daniel P. Schwarz** and **Martha Van Oot** were named "Leaders in their Field" in the 2014 *Chambers USA* Legal Guide.

*SAVE THE DATE!*

## **Jackson Lewis Portsmouth Office Annual Half-Day Legal Update**



*Please join our Portsmouth Office for a half-day legal update on the most pressing Labor and Employment topics.*

**Thursday, October 9, 2014**

Registration: 8:00 – 8:30 a.m. | Program: 8:30 a.m. – 12:00 p.m.

**Portsmouth Harbor Events and Conference Center**

100 Deer Street at 22 Portwalk Place | Portsmouth, NH 03801

*Invitation coming soon!*